

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2947

Introduced by Assembly Member Eng

February 22, 2008

An act to amend Section 1281 of the Code of Civil Procedure, and to add Section 15656.5 to the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2947, as amended, Eng. Elder and dependent adult abuse: waiver of rights.

Existing law provides that a written agreement to submit to arbitration an existing controversy or a controversy thereafter is valid, enforceable, and irrevocable, except for those grounds that exist for the revocation of any contract.

This bill would provide that those provisions shall not apply to any arbitration agreement applicable to a future controversy entered into between a ~~long-term~~ *residential care facility for the elderly*, as defined, an elder, as defined, or a dependent adult, as defined, or his or her representative, if the agreement is entered into in violation of a specified law prohibiting elder and dependent adult abuse.

Existing law, the Elder Abuse and Dependent Adult Civil Protection Act, establishes procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse.

This bill would prohibit a ~~long-term~~ *residential care facility for the elderly*, as defined, that ~~provider~~ *provides* care to an elder or dependent adult from requiring, as a condition of admission to, or of continued care at, the facility that an elder or dependent adult, or his or her

representative waive any right afforded under the act, including the right to file a complaint with the State Department of ~~Public Health Social Services~~, or a law enforcement agency, or to pursue a civil action *based on a claim for physical abuse, neglect, or death. The bill would also create a presumption of duress for any arbitration provision in an admission contract that is signed prior to or on the day of admission.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
2 (a) *Unlike health facilities providing 24-hour care that are*
3 *licensed under Section 1250 of the Health and Safety Code, current*
4 *statutory law does not specifically regulate arbitration clauses for*
5 *facilities licensed as residential care facilities for the elderly. It is*
6 *the public policy of the State of California to ensure that elders*
7 *and dependent adults and their representatives have the full benefit*
8 *of the rights and procedures contained in the Elder Abuse and*
9 *Dependent Adult Civil Protection Act (EADACPA) set forth in*
10 *Chapter 11 (commencing with Section 15600) of Part 3 of Division*
11 *9 of the Welfare and Institutions Code.*
12 (b) *Over two million elders are abused each year, and it is*
13 *estimated that one out of every 20 elders is a victim of neglect or*
14 *physical, psychological, or financial abuse.*
15 (c) *The Legislature recognizes that its enactment of the*
16 *EADACPA is to protect elders and dependent adults and to ensure*
17 *that they have the full protections afforded through recourse in a*
18 *civil action.*
19 ~~(a)~~
20 (d) It is the public policy of the State of California to ensure
21 that elders and dependent adults and their representatives have the
22 full benefit of the rights and procedures contained in the ~~Elder~~
23 ~~Abuse and Dependent Adult Civil Protection Act (EADACPA)~~
24 ~~set forth in Chapter 11 (commencing with Section 15600) of Part~~
25 ~~3 of Division 103. EADACPA.~~
26 ~~(b)~~
27 (e) Elder and dependent adults shall not be deprived of those
28 rights and protections by the use of coerced and involuntary
29 waivers of rights.

(e)

(f) It is the purpose of this act to require that any agreement to waive any rights or procedures under the EADACPA, including any agreement to arbitrate any claim arising under that law, is a matter of voluntary consent, and not coercion.

SEC. 2. Section 1281 of the Code of Civil Procedure is amended to read:

1281. (a) Except as provided in subdivision (b), a written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, except for those grounds as exist for the revocation of any contract.

(b) Subdivision (a) shall not apply to any arbitration agreement applicable to a future controversy entered into between a ~~long-term care facility, as defined in Section 15610.47 of the Welfare and Institutions Code, and a~~ *residential care facility for the elderly as defined in Section 1569.2 of the Welfare and Institutions Code*, and an elder, as defined in Section 15610.47 of the Welfare and Institutions Code, or dependent adult, as defined in Section 15610.47 of the Welfare and Institutions Code, or his or her representative, that is entered into in violation of ~~Section 15657~~ *15656.5* of the Welfare and Institutions Code.

SEC. 3. Section 15656.5 is added to the Welfare and Institutions Code, to read:

15656.5. (a) ~~No long-term care facility~~ *residential care facility for the elderly*, as defined in ~~Section 15610.47~~ *1569.2*, that provides care to elder or dependent adults shall require that an elder or dependent adult, or his or her representative, as a condition of admission to, or of continued care at, the facility waive any right afforded under this chapter, including the right to file a complaint with the State Department of ~~Public Health~~ *Social Services*, or a law enforcement agency or other entity, or to pursue a civil action *based on a claim for physical abuse, neglect, or death*.

(b) Any waiver of rights afforded under this chapter by an elder or dependent adult or his or her representative, under this section shall be knowing, voluntary, and in writing, and clearly not made as a condition of admission or continued care at a ~~long-term care facility~~ *residential care facility for the elderly*.

(c) Any waiver of rights, or any arbitration agreement entered by a ~~long-term care facility~~ *residential care facility for the elderly* and an elder or dependent adult, or his or her representative,

1 pursuant to this section that is required as a condition of admission
2 to, or continued care at ~~a long-term care~~, *the* facility shall be
3 considered involuntary, unconscionable, and unenforceable as an
4 action against public policy.

5 (d) ~~A long-term care facility~~ *residential care facility for the*
6 *elderly* shall have the burden of proving that any waiver of rights
7 signed by an elder, or dependent adult, or his or her representative
8 pursuant to this section, including any arbitration agreement, was
9 knowing, voluntary, and not made as a condition of admission to,
10 or continuing care at, the facility.

11 (e) *An arbitration condition contained in an admission contract*
12 *shall be presumed to be involuntary if the contract was signed*
13 *prior to or on the day of admission to the facility.*